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BELLA PALAZZO MANAGEMENT, LLC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AUSTIN LARUE BAKER,

Plaintiff,

vs.

BELLA PALAZZO MANAGEMENT, LLC.,

Defendant.

Case No. 2:25-cv-00565-FLA-PD

REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN FURTHER SUPPORT OF MOTION TO DISMISS

Date: June 27, 2025
Time: 1:30 pm
Courtroom: 6B

REPLY MEMORANDUM OF POINTS AND AUTHORITIES

I. DISMISSAL FOR FAILURE TO STATE A CLAIM

Plaintiff's entire opposition to BPM's motion to dismiss for failure to state a claim hinges on his dictating that the Court "must accept" the unsupported, unpleaded, nonsensical fantasy that Mr. Roberts paid BPM $1,000 to obtain the Works so that Ms. Anderson could post them on the internet in connection with the sale of the Delores Property. (Opposition at 6). Plaintiff states that the law requires the Court to ignore Plaintiff's own contradictory allegations—including that Ms. Anderson already had copies of the Works pursuant to a transaction with Plaintiff in 2022 (Complaint at ¶22), and that "Mr. Roberts had paid Plaintiff $1,000 to purchase the works" (Complaint at ¶26)— and even goes so far as to insist that "[t]here is ***nothing*** implausible about Plaintiff's allegations or stated claim." (Opposition at 6 (emphasis maintained)). But merely insisting on something (even in bold italics) does not make it so. As detailed in BPM's moving brief, Plaintiff's own Complaint conclusively demonstrates that BPM had nothing to do with posting the Works on the internet or distributing the works to Mr. Roberts or Ms. Anderson. Thus, BPM's motion to dismiss is well founded and meritorious, and, as set forth below, Plaintiff's arguments in opposition to the motion all fail.

First, again, it bears repeating that, notwithstanding Plaintiff's admonition otherwise, the court is not "required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (emphasis added). To survive a motion to dismiss, the factual allegations in a plaintiff's complaint must sufficiently cross the line from merely "conceivable" to a level "plausibly suggesting" that the plaintiff is entitled to

relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 570 (2007). And, importantly, a court need not feel constrained to accept as truth "conflicting pleadings that make no sense, or that would render a claim incoherent." *Scotten v. First Horizon Home Loan Corp.*, 2012 WL 3277104, at n.1 (E.D. Cal. Aug. 9, 2012).

Plaintiff submits in his opposition that the Complaint adequately and plausibly "alleges that Defendant distributed copies of the Work for commercial use to third-party owners and/or realtors without Plaintiff's permission" because it states that Mr. Roberts "paid someone $1,000.00 for the photographs" and that Ms. Van Zee "confirmed" that BPM "transferred/sold" the Works to Mr. Roberts by "apologiz[ing] for [Mr. Roberts/Ms. Anderson] utilizing the images without approval." Plaintiff's theory fails for multiple reasons.

First, Mr. Roberts's alleged statement that he purchased the Works from Plaintiff obviously does not support the opposite inference that Mr. Roberts purchased the Works from BPM. While Plaintiff may deny that he ever "sold or licensed the Work[s] to Mr. Roberts (or anyone other than Defendant)" (Complaint ¶27), the Complaint also demonstrates that at least Ms. Anderson (who ultimately posted the Works on the internet) (Complaint ¶¶25-26)) also had copies of the Works pursuant to the transaction in 2022 (Complaint ¶¶22-24). In any event, disregarding Plaintiff's conclusory speculation, the only actual fact alleged in the Complaint regarding where Mr. Roberts/Ms. Anderson got the Works is that they got them directly from Plaintiff. (Complaint ¶26).[1]

Second, Ms. Van Zee's supposed "apology" "for [Mr. Roberts/Ms. Anderson] utilizing the images without approval" does not constitute "confirmation" that Mr. Roberts obtained the Works from BPM. Indeed, even if Plaintiff's paragraph 28 is assumed true, Ms. Van Zee was explicitly not apologizing on her own behalf but rather,

[1] Notably, Plaintiff's opposition confirms that Ms. Anderson did, in fact, obtain copies of the Works during the 2022 transaction. (Opposition at 6).

per Plaintiff's own allegation, was apologizing "for" conduct by "Mr. Roberts/Ms. Anderson." Thus, even setting aside that Plaintiff offers no explanation for how the alleged "apology" constitutes "confirmation" of anything, to the extent it was it confirmed only that "Mr. Roberts/Ms. Anderson"—but not BPM—"utilized" the Works.[2]

Ultimately, Plaintiff's allegation that Ms. Van Zee "confirmed" that BPM infringed on Plaintiff's copyright is a bare legal conclusion which cannot survive a motion to dismiss. Not only does Plaintiff fail to allege facts that support the inference that the BPM admitted to infringement, Plaintiff actually alleges facts to the contrary. Again, Plaintiff's entire theory of liability requires the Court assume an implausible series of events supported by unreasonable inferences and contradicted by Plaintiff's own allegations. Thus, BPM's motion to dismiss for failure to state a claim should be granted.

II. DISMISSAL FOR FAILURE TO JOIN A NECESSARY PARTY.

As stated in BPM's motion, FRCP 19 states that "[a] person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if: (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest."

This suit hinges on who transferred the Works to Mr. Roberts, who allegedly then transferred the Works to Ms. Anderson (who admittedly already had the Works), who then posted the Works on the internet. Plaintiff's theory of liability against BPM requires that he prove that BPM transferred the Works to Mr. Roberts, who has already sworn that he did not receive the Works from BPM. If the Court were to find Plaintiff

[2] Indeed, in allegedly making her apology Ms. Van Zee arguably was speaking as an agent (i.e. property manager) on behalf of her principal Mr. Roberts (property owner).

(rather than BPM) transferred the Works to Mr. Roberts (either directly or via Ms. Anderson, who was ultimately responsible for posting the works on the internet), Mr. Roberts's ability to defend a copyright suit from Plaintiff would be significantly impaired. There also is a risk of conflicting judgments because a different court may find Mr. Roberts did not receive the Works from Plaintiff. Therefore, because a ruling in this case could prejudice Mr. Roberts legal interests and creates a risk of conflicting judgments, Mr. Roberts is an indispensable party.

Likewise, if BPM proves it did not transfer the Works to Mr. Roberts, Ms. Anderson's defense that she received the Works from Mr. Roberts, will be significantly impaired. It will also create a risk of conflicting judgments because a subsequent court may find Ms. Anderson did receive the Works from Mr. Roberts. Therefore, because a ruling in this case could prejudice Ms. Anderson's legal interests and creates a risk of conflicting judgments, Ms. Anderson is an indispensable party.

Plaintiff's objection, that Ms. Anderson and Mr. Roberts are not indispensable parties because damages for copyright infringement are joint and several, does not resolve the prejudice to their legal interests, nor does it resolve the risk of subsequent conflicting judgments. Therefore, BPM's motion also should be granted, and the case should be dismissed, for failure to join a necessary party.

III. CONCLUSION

For the foregoing reasons, BPM respectfully requests that the Court dismiss the Complaint and this entire action with prejudice and grant BPM such other and further relief as may be just and proper.

PRYOR CASHMAN LLP

Dated: June 9, 2025

By: */s/ Benjamin S. Akley*

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